

REMARKS/ARGUMENTS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe the subject matter which applicant regards as the invention.

Claims 1-34 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 34-68 of co-pending U.S. Patent Application No. 09/804,848. Applicant elects not to presently file a terminal disclaimer pending the indication of otherwise allowable claims by the Examiner.

Claims 1-24, 27 and 34 were rejected under 35 U.S.C. 102(b) over U.S. Patent No. 6,084,975 to Perkins. Claim 22 has been amended herein to more clearly distinguish from the prior art. For the following reasons, the rejection is traversed in part, and has been rendered moot in part.

Regarding claim 1, Perkins does not teach a method of establishing a communications link comprising the step of “establishing one of said at least two electrical conductors *by the individual's body*,” as required. Perkins teaches establishing connections via subcutaneous wires (56, 66) implanted in an individual's body (column 6, lines 7-13). In contrast, the step of “establishing” in claim 1 clearly requires that an individual's body *acts as an electrical conductor* of the communications link. Perkins does not teaching using the individual's body as a conductor, as in claim 1.

The Examiner has stated that Perkins teaches “providing an electrically connective communications pathway through the body of a user of the set as claimed.” Applicant does not disagree. However, as explained above, claim 1 requires not only that an electrically connective

communications pathway be provided *through the body*, but also that one of the two electrical *conductors* is established *by the body*. In Perkins, all of the electrical conductors disclosed are established by wires (56 in FIG. 2 and 66 in FIG. 3), not by the body of an individual as in claim 1.

For all of the above reasons, since every limitation of the claim is not taught by Perkins, claim 1 and its dependent claims 2-21 are not anticipated by Perkins.

Regarding amended claim 22, Perkins does not teach “a pair of body electrodes for establishing an electrically conductive communication path *by using the body of an individual* wearing said binaural hearing device set *as an electrical conductor*,” as required. As amended, claim 22 now clearly requires that an individual’s body *acts as an electrical conductor* of the communications path. As explained in detail above with regard to claim 1, Perkins does not teach using the individual’s body as a conductor. Therefore, since every limitation of the claim is not taught by Perkins, claim 22 and its dependent claims 23, 24, 27 and 34 are not anticipated by Perkins.

Claims 1-21, 25 and 28-33 were also rejected under 35 U.S.C. 103(a) over Perkins in view of Maeda et al. The Examiner has cited the Maeda et al. patent as being U.S. Patent No. 6,084,975. However, since this is the patent number of the previously cited Perkins patent, it is presumed that the Examiner intended to cite U.S. Patent No. 6,597,320 to Maeda et al. in making the rejection. Therefore, the rejection has been treated as such. As previously mentioned, claim 22, from which claims 25 and 28-33 depend, has been amended herein to more clearly distinguish from the prior art. For the following reasons, the rejection is traversed in part, and has been rendered moot in part.

For the reasons explained in detail above with regard to the rejection under 35 U.S.C.

102(b), Perkins does not teach or suggest using the individual's body as a conductor. In making the present rejection, the Examiner cites Maeda as exemplifying a well-known communication technique comprising a conductive member for transmitting signals in users bodies.

The present application is a continuation-in-part of U.S. Patent Application No. 09/804,848 (hereinafter "the parent application"), which was filed on March 13, 2001, prior to the earliest effective date of the Maeda patent, September 6, 2001. Applicant respectfully submits that claim 1 is fully supported by the disclosure of the parent application. In particular, with reference to FIG. 5B, the parent application discloses using a body-contacting electrode (35) to establish the common potential reference path of a communications link between two hearing devices, in addition to using a wire to establish the other path of the communications link. Thus, since the parent application predates the earliest effective date of Maeda under 35 U.S.C. 102/103, Maeda is not available as prior art against claim 1, since it is fully supported by the parent application (see MPEP § 706.02(V)(B)). In particular, with reference to FIGS. 5A and 5B and the related description, the parent application discloses using a body-contacting electrode (35) to establish the common potential reference path of a communications link between two hearing devices, in addition to using a wire to establish the other path of the communications link. Therefore the rejection of claim 1 relying on Maeda cannot stand. Since claim 1 is patentable over the cited combination, its dependent claims 2-21 must also be patentable.

Further, Applicant respectfully submits that claims 22 and 23 are fully supported by the disclosure of the parent application. In particular, with reference to claim 22, the parent application discloses using a pair of body-contacting electrodes to establish a electrically conductive path of a communications link by using the body of the user as an electrically conductive ground reference path: a first body-contacting electrode (35) is shown in FIGS. 5A

and 5B and a second ground electrode (IF_GND) is described on page 15 at lines 24-29. With reference to claim 23, the communications link also includes at least one single wire as shown and described with reference to FIGS. 5A and 5B. Therefore neither claims 22 and 23 can be rejected by a combination of references including Maeda. Since claims 22 and 23 are patentable over the cited combination, their respective dependent claims 25 and 28-33 must also be patentable over this combination, and thus the rejection cannot stand.

Further, in making the rejection of claims 1-21 under 35 U.S.C. 102, the Examiner states that "method claims 1-21 are similar to claims 22-24, 27 and 34 except for being couched in method terminology; such methods would be inherent when the structure is shown in the references." A similar statement is made by the Examiner with reference to the rejection of claims 1-21 under 35 U.S.C. 103(a). It is respectfully submitted that Applicant is entitled to have each and every claim examined, and each of the claim limitations considered in view of the prior art. Moreover, in order to support a rejection under 35 U.S.C. 102 or 103(a), *each and every limitation* of the claims must be shown to have been taught or suggested by the cited reference. The issue of inherency aside, there are notable differences in the language of method claims 1-21, as compared with the apparatus claims. Applicant therefore respectfully requests that the Examiner provide an explanation as to the specific basis for rejecting claims 1-21.

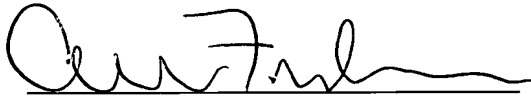
In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

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Amdt. Dated March 7, 2005
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If there are any additional fees resulting from this communication, please charge same
to our Deposit Account No. 16-0820, our Order No. 34351.

Respectfully submitted,

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